SUPREME COURT, U. S.

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In the

Supreme Court of the United States

October Term, 1967

No. 512

PIONEER PLASTICS CORPORATION,
PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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In the

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No.

PIONEER PLASTICS CORPORATION,

PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Pioneer Plastics Corporation prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit.

Opinion Below

The Opinion of the Circuit Court is reported at . . . F.2d . . . . A copy of the opinion is appended hereto. Appendix A infra.

Jurisdiction

The Judgment was entered on June 23, 1967. The jurisdiction of the Court is invoked under 62 Stat. 928.

Question Presented

I. Whether the uncorroborated testimony of alleged discriminatees who possess a pecuniary interest in the result of the case constitutes substantial evidence when it is in conflict with the testimony of disinterested parties where the Trial Examiner gives no basis for his credibility findings.

II. Whether two employees who left work because of the discharge of other employees engaged in protected activity where they did so solely out of anger and with no intention of seeking redress for the discharged employees.

Statement of the Case

The Respondent is engaged in Auburn, Maine, in the manufacture of plastic laminates and related products. The Company began operating in Auburn in the spring of 1965. During August, 1965 there were roughly four hundred and fifty production employees in the plant.

The entire plant has 380,000 feet on one floor, equivalent to about 9 acres. The 8(a)(3) cases involve events which took place chiefly in the buildup room of the plant, an extremely large room estimated to be the size of a city block. This room is quite active and noisy with fans and air conditioners and trucks constantly passing throughout (R.A. pp. 227, 244).

In August, 1965, there were two foremen in the buildup room, Louis Alexander and Paul Roy, a lead girl, Elsie Boston, several tickets girls including Rebecca Gould, and many employees known as floor girls and builders. During

July of 1965 Boston and Gould performed their duties quite well (R.A. p. 132). However, in early August a drastic change took place. This change coincided with the arrival of several girls from the Sanford plant operated by a Respondent affiliate company who were to instruct the girls in order to improve production (R.A. pp. 246, 263).

Boston and Gould resented the Sanford girls, among other reasons because the Sanford girls were receiving more money (R.A. p. 25). The work performance of Boston and Gould declined significantly (R.A. p. 253). Because the type of work they did affected the entire room, the rate of production in the buildup room dropped drastically (R.A. pp. 246, 263). Boston and Gould encouraged other girls deliberately to slow down (R.A. pp. 246, 265, 282). They spent an unusual amount of time in the ladies room and were absent for many full and partial days (R.A. pp. 264, 266).

The foremen, Alexander and Roy, discussed the situation and decided something had to be done. Alexander went to Mr. Robert Tremblay, the company's personnel manager, and asked that the girls be terminated. This occurred on August 13, 1965 (R.A. pp. 249, 250, 265). Tremblay called the girls into his office and told them that he was suspending them subject to an investigation and for them to come to see him the following Monday at 3:00 p.m. at which time he would give them his final decision (R.A. p. 192).

In that period, Tremblay investigated the situation. He found that Alexander and Roy were justified. However, being an experienced personnel director, he recognized the problems in a new plant and decided to give the girls one more chance. He discussed the matter with the foremen and they agreed. When the girls came back on Monday, August 16th Tremblay told them that he was going to give them another chance and was even going to pay them for the two days they were out. He emphasized to them, however, that they had better attend to their business (R.A. p. 194).

Roy spoke to the girls before they began work and told them that they would be closely watched and that if they had any problems they should come to him and he would help them in any way he could (R.A. pp. 250-251).

For the first day, the two girls did a good job. However, they soon reverted back to their pre-suspension habits (R.A. p. 251). The situation came to a head one week later, on Monday, August 23. Shortly after lunch, the two girls went separately to the foremen. Boston said she had to leave that day at 2:00 p.m. The girls were asked whether they could make these appointments after working hours and they both replied in the negative (R.A. pp. 251-252).

Alexander told Tremblay of the incident. Tremblay asked Alexander to have the girls write the names of the doctors down just so there would be no mistake. The girls wrote down the same names as they had given the day before. Tremblay later that day discovered that there was an eye doctor with the name given by Boston when she said she was going to the dentist. He called the eye doctor, who was vague about Boston's alleged visit (R.A. pp. 194-196). Because of this vagueness of the eye doctor and because Boston had said she was going to a dentist, and in fact on the morning of the 24th talked about what the dentist had done to her tooth, Tremblay did not believe the story (R.A. p. 11). As for Gould, Tremblay knew she was lying because of her doctor's absence from town. Tremblay did not know where the girls had gone but suspected that they were looking for another job and so told them (R.A. p. 197). At that time he decided that for lying as to their absence coupled with their continued poor work after the earlier warning, Boston and Gould would be terminated (R.A. p. 197; 64-65).

On Wednesday morning, August 25, he sent for each of them separately and terminated them (R.A. pp. 196, 197). Boston was the first one terminated. When she returned to the buildup room, she took off her smock and headed into

the breaking room where she engaged in a conversation with a group of men. When Gould returned from Tremblay's office she also went into the breaking room. At approximately the same time, Blaisdell and LeBel took off their smocks and ceased work (R.A. p. 268). After the girls were in the breaking room almost 20 minutes, Alexander came in and asked them to leave. Boston turned to him and said "I'll leave when I goddamned please, you son of a bitch. I'll get you for this, you son of a bitch" (R.A. p. 269). A few minutes later the two girls left and went down to Tremblay's office to pick up their checks (R.A. p. 276). Blaisdell and LeBel also went down and said they were quitting and asked for their checks (R.A. p. 198).

A few days later LeBel and Blaisdell returned to the plant and asked Tremblay for their jobs back. He informed them that their jobs had been filled. The jobs had in fact been filled (R.A. p. 13).

The above statement of fact is a composite of the testimony not only of Respondent's supervisors but also of disinterested parties, Monica Bedell and Constance Moad who were employees and who were members of the Union involved in this case.

The Trial Examiner, in making his findings, totally credited the uncorroborated and contradictory testimony of Boston and Gould and, where conflicting, rejected the testimony not only of Company supervisors but, as noted above, of rank and file employees who had no interest whatsoever in the outcome of the case. The Trial Examiner did not attempt to justify his credibility findings on the basis of demeanor or on any other basis.

The Petitioner excepted to the findings but they were upheld to the Board.

Upon the Board's petition for enforcement, the United States Court of Appeals For the First Circuit under the authority of Section 2112 of Title 28 of the United States

Code enforced the Board's order. In doing so the Court declined to review the credibility findings of the Trial Examiner.

Reasons for Granting the Writ

I. The decision of the First Circuit upholding the Trial Examiner's credibility findings is in conflict with the decision of the Sixth Circuit in *National Labor Relations Board* v. *Ogle Protection Service*, 375 F.2d 497 (1967). In that case, the Court in refusing to enforce a Board order stated:

> "However, it has been held that when under circumstances similar to those present in the instant case, the findings of the Trial Examiner and the Board are based primarily on the uncorroborated testimony of the party who stands to benefit from an award of reinstatement and back pay, such testimony may not constitute substantial evidence."

In the instant case, the Court, during the course of the oral argument, rejected the principle laid down in *Ogle*. This rejection raises a serious conflict among the circuits on a question of utmost importance under the National Labor Relations Act. It is an issue that will constantly arise in cases involving alleged discriminatory discharges. It is important that the Supreme Court resolve the conflict so that uniformity will exist in the administration of the federal labor laws.

II. The Circuit Court's determination regarding Blaisdell and LeBel is in conflict with the decision of this Court in *National Labor Relations Board* v. *Washington Aluminum Co.*, 370 U.S. 2 (1962) and with the Second Circuit in *National Labor Relations Board* v. *Jamestown Veneer and Plywood Corp.*, 194 F.2d 192 (1952). In *Washington Aluminum* this Court held that when employees engaged in concerted activity for their mutual aid and protection it made

no difference whether a specific demand to management by the employees took place before, after, or at the same time as the concerted activity. It did not hold as the Board and the First Circuit appear to infer that no specific purpose is necessary for the activity to be protected.

In *Jamestown Veneer* the Second Circuit held that concerted activity must have a specific purpose if it is to be protected. If the employees are vexed with a management action and neither make any protest to management nor ask that something be done about it, then their activity is unprotected.

The evidence is undisputed that when Blaisdell and LeBel walked out they did so out of anger and did so on a permanent unconditional basis. That they later were sorry in no way changes the character of the original act nor is it changed by the conclusion relied on by the Court that the Company must have known why they were walking out. At no time did they say they would return only if the discharged girls were rehired nor did they seek to achieve any goal. Therefore, their action had no specific pupose, a necessary requirement to the finding of a protected activity.

Conclusion

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Appendix A

United States Court of Appeals
For the First Circuit

No. 6860.

NATIONAL LABOR RELATIONS BOARD,

PETITIONER,

v.

PIONEER PLASTICS CORPORATION,

RESPONDENT.

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before ALDRICH, *Chief Judge*,
McENTEE and COFFIN, *Circuit Judges*.

Warren M. Davison, Attorney, with whom *Arnold Ordman*, General Counsel, *Dominick L. Manoli*, Associate General Counsel, *Marcel Mallet-Prevost*, Assistant General Counsel, and *Stanley Lubin*, Attorney, were on brief, for petitioner.

Louis Chandler, with whom *Alan S. Miller* and *Stoneman and Chandler* were on brief, for respondent.

June 23, 1967.

McENTEE, *Circuit Judge*. In this case the National Labor Relations Board petitions us to enforce its order issued against the respondent employer, Pioneer Plastics Corporation. The order is based upon the Board's findings that during a union organizing campaign at its plant in Auburn, Maine, Pioneer engaged in certain antiunion activities proscribed by Section 8(a)(1) of the Act; also, that it discharged two employees because of their union activities and refused to reinstate two others—in violation of

Section 8(a)(3) and (1) of the Act. Our only function here is to determine whether, on the record as a whole, there is substantial evidence to support these findings. *N.L.R.B.* v. *Samuel B. Gass,* F.2d (1st Cir. May 5, 1967). If so, the Board's order must be enforced.

The facts are not complicated and insofar as is practical we shall recite them in chronological order. Pioneer, a manufacturer of plastic laminates and related products, operates a manufacturing plant in Sanford, Maine. Its employees are represented by the Leather Workers International Union, AFL-CIO. In the spring of 1965 Pioneer opened a new plant in Auburn, Maine. Quite understandably, the union was anxious to become the collective bargaining agent for the employees at this plant and on August 4, 1965, one Quadros, the union representative, went to the vicinity of the Auburn plant for the purpose of actively starting the organizing campaign.[1]

On August 9, at a meeting in Boston, the Leather Workers Union requested recognition on the basis of a card check—but respondent's president, one Aron, took the position that the company was not yet ready for a union in the Auburn plant. Quadros made it clear, however, that the union intended to continue with its organizing campaign at the Auburn plant. A week later (August 16) when Quadros was parked outside the company plant, Aron sent out the personnel director, one Trembly, to see what he was passing out that day. Later the same day Aron himself appeared on the scene. He and Quadros then went to a nearby restaurant and in the course of their conversation Aron suggested a deal under which the union organizing

[1] Even before the Auburn plant opened, Quadros held several conversations with respondent's president and its personnel director in which he stated that his union intended to organize the new plant and requested recognition as bargaining agent. The president countered that it was "premature" to talk about the Auburn plant.

drive then in progress at Auburn would be discontinued. Not only did Quadros reject this proposed deal, but thereafter he stepped up the union's organizing efforts. On August 18, Quadros again went to the plant and while there arranged a union meeting to be held at a nearby gas station on the afternoon of August 23. Some fifteen employees attended this meeting, including Elsie Boston and Rebecca Gould. When a policeman broke up the meeting the group adjourned to Mrs. Boston's home where Karen Blaisdell and Barbara LeBel joined the meeting. We note that it was at this meeting that Quadros first met these four women employees whose activities, as we shall see, figure so prominently in this case. Two days later (August 25), Boston and Gould were discharged and when they left the plant Blaisdell and LeBel also left with them. On the next day Boston and Gould, together with Quadros and some other employees were stationed outside the plant for about two hours distributing union literature and soliciting employees to sign union authorization cards. During most of this time a company supervisor watched their activities. In fact, at one point the president of the company drove up and made a disparaging remark to Quadros. Soon after he left, a police officer arrived and stayed until the group left. The policeman stated that he was there because there was a complaint they were "tying up traffic." On two other occasions in early September Trembly parked close by and watched a group of employees who were meeting with Quadros near the plant and passing out union literature.

Also, during this period the Teamsters Union[2] was actively engaged in organizing respondent's truck drivers

[2] Truckdrivers, Warehousemen and Helpers Union, Local No. 340, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

and mechanics at the Auburn plant.[3] The traffic manager for the trucking division, one Libby, was a former member of the Teamsters Union. In late August when an official of this union remarked to Libby that it ought to be an easy job for the Teamsters to sign up the drivers, he replied in no uncertain terms that it was his job to keep the Teamsters Union out.

In October the Teamsters Union wrote to these employees urging them to join the union and inviting them to a union meeting on October 23rd. Hearing rumors of union activities, Libby called in a number of employees on the day of the scheduled union meeting and discussed this organizing effort individually with each one of them. The general manager of the company was also present at some of these discussions. Both of these officials made antiunion statements to the employees and Libby, in particular, made it crystal clear to them that his job was to keep this union out. He also outlined some drastic changes that were about to take place in trucking operations at the plant because of the union activities.[4] In October when one of the drivers

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[3] This case is somewhat unusual in that two distinct factual situations and two separate unfair labor practice charges by two different unions are involved. In accordance with the usual practice, these charges were heard originally by a trial examiner who made certain findings. The Board adopted these findings as its own and based its order upon them. Although respondent moved for a severance, this consolidation is a matter of convenience and there appears to be no prejudice as a result of hearing both charges together.

[4] For example, after inquiring from the first employee if he knew of any union activity around the garage, Libby told him that because of union activities all local hauling would be done by a separate hauling company; that all long hauls would be a single man operation as opposed to the present two-man system; that the drivers would be paid on an hourly instead of a trip basis; that mechanic work would be contracted out and that these changes would reduce the number of employees from eighteen to five. He then asked this employee if he wanted to be a long haul driver under the new system, which offer was refused. Libby told the several other employees substantially the same thing.

asked Libby's assistant if he could have a Sunday run, he informed him that he couldn't promise anything because of the union's campaign.

We think this evidence amply supports the Board's findings (1) that respondent engaged in surveillance of the union activities of its employees at the Auburn plant; (2) that it coercively questioned the employees in the trucking division regarding their union membership and activities and also threatened reprisals and promised benefits to influence these employees not to join the Teamsters Union—all in violation of Section 8(a)(1) of the Act.[5]

We return now to the discharge of employees Boston and Gould and also the company's refusal to reinstate Blaisdell and LeBel. Boston and Gould worked in the buildup room of the plant where most of the union activity centered. Both had been repeatedly complimented by their immediate superiors for their good work. Boston was rapidly promoted and at the time of her discharge was the "lead girl".[6] At that time, some thirty girls worked in this room. Gould also went up the ladder fast and soon became a "ticket girl". At the request of these two employees four girls came from the Sanford plant on or about August 2 for the purpose of instructing the employees in the buildup room. A few days later Boston asked them how much pay they were getting in Sanford but received no reply. Thereupon, she asked the assistant plant manager and two supervisors for the name of the union at Sanford

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[5] 29 U.S.C. § 158(a)(1).

[6] As such, respondent contends that she was a supervisor and thus not covered by the Act, but we find no merit in this contention. The record demonstrates that Boston merely assisted her foreman in the buildup room, did some paper work, took inventories and relayed orders. Also, she assisted the other girls and answered questions but she had no real discretion and had no authority to hire, discharge, discipline or assign employees. She was paid on an hourly rather than a salary basis and did not have certain other benefits afforded to supervisors.

and was rebuffed by all three of them. Boston and Gould then began talking to their fellow employees about a wage increase and of the need for a union at the plant. Frequently two of their immediate supervisors were close by when these talks took place.[7] Soon thereafter (Friday, August 13), Trembley called both employees to his office and told them that their work was unsatisfactory, that they were "instigators",[8] and suspended them pending decision as to whether they would be discharged altogether. On the following Monday morning, Blaisdell and LeBel got together a protest group to talk to Trembly on behalf of Boston and Gould. That afternoon both were reinstated without loss of pay but were warned to keep their words to themselves. The very next morning their immediate supervisor again praised their work to date but cautioned them to be careful because the company was going to watch them. Despite these warnings, Boston continued to stress the need for a union with her fellow employees.

A few days later Boston was informed of the August 23 union meeting above mentioned, told Gould about it and each of them asked her supervisor for permission to leave early on that day.[9] At this meeting both of them signed union cards and it was agreed that another union meeting would be held at Mrs. Boston's home.[10] Two days after

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[7] Boston and Gould did this on their lunch hours, during coffee breaks and also in the buildup room itself.

[8] When Mrs. Boston asked what they were investigating, the personnel director replied "you know what."

[9] Neither one gave the real reason for wanting to leave early. Boston said she had a dentist appointment and Gould represented that she had to go to the doctor. Instead, both attended the union meeting. The very next day a supervisor checked these excuses and found them to be false.

[10] At work the following day, Boston talked about the meeting to a number of employees in the buildup room and asked them to attend the next meeting at her home. Gould also talked to some of the employees about the meeting of the day before and asked them to

this meeting (August 25), Trembly called Boston and Gould to his office and discharged them. He gave as his reasons—unsatisfactory work and lying about where they were going when they asked permission to leave early on the 23rd. He gave no indication, however, that he knew the real reason.[11]

Blaisdell and LeBel also worked in the buildup room. They, too, had the reputation among their supervisors of being good workers. Boston had notified them of the August 23rd meeting which they attended after work and at which they also signed union authorization cards. On August 25 when Boston came from Trembly's office and told these girls that she had just been fired, both of them immediately took off their smocks and without saying anything, put them on the foreman's desk. When asked by some of the other girls why they had done this, they said they were leaving because "Boston had been fired for speaking about (sic) union in the plant." Also, they discussed a possible walkout with some of the male employees as a protest against Boston's discharge. After Gould was fired she joined the other three. A few minutes later a company supervisor told all four of them to get their checks and leave the plant.[12] The next day Blaisdell and LeBel tried without success to see Trembly who, incidentally, later the same day saw Blaisdell distributing union literature outside the plant. The following day they returned to the plant, met with Trembly, apologized to him for walking out with Boston and Gould; said they did it because they

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come to the next one. There is evidence that when Gould did this, her immediate supervisor was only about five feet away.

[11] A few days later Boston and Gould returned to the plant asking to be rehired. Trembly told them he would talk it over with their supervisors and let them know. He added, however, that he did not want a union in the Auburn plant at that particular time. Shortly thereafter he told Boston he had decided not to rehire them.

[12] Blaisdell and LeBel's checks were not ready but they waited for them and then left the plant with Boston and Gould.

were "mad" and asked about getting their jobs back.[13] About a week later Trembly told LeBel he thought it best not to reinstate either her or Blaisdell.

On this record the Board found that the respondent employer discharged Boston and Gould because of their union activities in violation of Section 8(a)(3) and (1).[14] It also found that in walking off the job, Blaisdell and LeBel were engaging in a concerted refusal to work, in protest against these discriminatory discharges and for that reason the company's refusal to reinstate them also violated these sections of the Act.

To begin with, respondent asks us to reject as erroneous the credibility findings of the Board, particularly those with reference to the testimony of Boston and Gould. In this connection we point to what we said in *N.L.R.B.* v. *Universal Packaging Corporation*, 361 F.2d 388 (1st Cir. 1966): "that questions of credibility are for the Board, subject to judicial review only when the Board oversteps the bounds of reason. We shall not substitute our judgment for that of the trial examiner who heard the testimony and observed the witnesses, nor for that of the Board with its vast experience in dealing with labor disputes." There is no basis for finding that the Board overstepped the bounds of reason in making these findings.

The discharge of Boston and Gould present two critical questions: (1) whether respondent employer had knowledge of their union activities prior to discharging them, and (2) whether the discharges were motivated by these activities. Although there is no direct evidence that prior to their discharge, Pioneer knew of the union efforts of

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[13] He told them their work records were very good but their jobs had been filled and he would look into the matter. It is interesting to note that during this conversation the personnel director showed the girls a union leaflet which he said he received and remarked that he wanted a couple of years without a union in the Auburn plant.

[14] 29 U.S.C. § 158(a)(3) and (1).

these two employees, both of them testified that the buildup room supervisors were within hearing distance on numerous occasions when they spoke to other employees about a union. While such conversations in and of themselves are not a sufficient basis to infer knowledge, there is additional affirmative evidence here which indicates a strong likelihood that in fact the respondent employer knew of their union activity.

It is clear that in early August this employer was very much aware of the Leather Workers organizing campaign at Auburn. On August 6, Boston inquired not only of the assistant plant manager but of two other plant supervisors as well, as to the name of the Sanford union. She failed to receive a satisfactory answer from any of them and thereupon both she and Gould began talking to the employees in the buildup room about a wage increase and the need for a union at the plant. On August 9, Gould's immediate supervisor approached her and asked if "the union from Sanford (was) going to get in up here." Also, when Boston and Gould were suspended on August 13, Trembly accused them of being "instigators." In reinstating them, Trembly said he would keep his eyes open and that they should keep [their] words to [them]selves. Furthermore, when they came back to work the next morning their immediate supervisor warned them to watch themselves because the company was going to be watching them. When Boston was fired, Trembly told her, among other things, that she "did not know how to keep [her] mouth shut." Later, when Boston and Gould asked Trembly for their jobs back, it is significant that he said he did not want a union at the Auburn plant at that time. These facts, coupled with the open union activity in which these two employees engaged during business hours, amply support the Board's conclusion that respondent knew of Boston and Gould's union activities.

The company suggests that because Boston and Gould met Quadros for the first time at the union meeting of August 23, which was just before their discharge, they could not have been engaged in union activities prior to that date. There is simply no merit in such a contention. Boston and Gould's union efforts need not have been in connection with this particular organizing campaign in order to constitute union activities.

Also, respondent strongly contends that there was good cause for discharging these two employees—poor work performance and lying to the company as to the real reason for wanting to leave early on August 23. As to the first reason, the credited testimony clearly shows that Boston and Gould were very good workers. Up through August 13 both girls were frequently complimented by their supervisors for the quality of their work. Boston started out as a "builder" and after five weeks was promoted to head ticket girl. A week later she became the lead girl in the buildup room. Gould also started at the bottom and later became one of four ticket girls in this room.

There is no doubt that the second ground given by the company is a proper basis for discharge. But as we stated in *N.L.R.B.* v. *Lipman Brothers, Inc.*, 355 F.2d 15, 21 (1st Cir. 1966), "It is well settled that the mere existence of a valid ground for discharge is no defense to an unfair labor charge if such ground was a pretext and not the moving cause." It must be shown, however, that the improper motive—union activity—is the dominant reason for the discharge, *N.L.R.B.* v. *Lowell Sun Publishing Company*, 320 F.2d 835, 842 (1st Cir. 1963) (concurring opinion). From the evidence, we think the Board could reasonably infer that Boston and Gould's union activities weighed more heavily in respondent's decision to discharge them than the reasons given. This is particularly true in light of respondent's strong opposition to the union coming into the

plant at that time, and the further evidence that although both Boston and Gould had on other occasions been granted permission to leave work early, their reasons were never questioned until August 23—in the midst of the Leather Workers organizing campaign. Also of significance is the fact that Boston's immediate supervisor felt that she was "best qualified" for the position of lead girl and that "she could do the work better than anyone else."

There is no question that employees may spontaneously agree to cease work in protest against their employer's conduct toward fellow employees and that such concerted action is protected activity. *N.L.R.B.* v. *Phaostron Instrument & Electronic Co.*, 344 F.2d 855 (9th Cir. 1965); *N.L.R.B.* v. *Puerto Rico Rayon*, 293 F.2d 941, 946 (1st Cir. 1961). Respondent recognizes this principle but argues in effect that it was never informed of Blaisdell and LeBel's reason for walking out and consequently did not violate the Act by refusing to reinstate them. Although no demand was made by either Blaisdell or LeBel that Boston and Gould be reinstated or otherwise they would leave, the circumstances were such that it is only reasonable to infer that respondent knew their reason. Cf. *N.L.R.B.* v. *Washington Aluminum Co.*, 370 U.S. 9 (1962); *N.L.R.B.* v. *Phaostron Instrument & Electronic Co., supra.* The circumstances immediately surrounding this walkout, plus the fact that just a short time before, both Blaisdell and LeBel led a protest group on behalf of Boston and Gould, clearly show that their walkout was in protest of the discharge of their two fellow employees.

A decree will be entered enforcing the order of the Board.

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 512

PIONEER PLASTICS CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. A1-A11) has not yet been reported. The Board's decision and order (B.A. 158-187)[1] are reported at 159 NLRB No. 110.

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[1] "B.A." references are to the Board's Record Appendix filed in the court of appeals. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

JURISDICTION

The judgment of the court of appeals was entered on June 23, 1967 (Pet. A1). The petition for a writ of certiorari was filed on August 18, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there is substantial evidence to support the Board's findings that the employer discharged two employees for antiunion reasons, and refused to reinstate two employees who concertedly ceased work to protest the discriminatory discharge of their fellow employees.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*), are as follows:

> Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8.(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

STATEMENT

A. The Board's Findings of Fact

Petitioner operates a plant in Sanford, Maine, where it is engaged in the manufacture, sale, and distribution of plastic laminates and related products (B.A. 159; 95-96). In the spring of 1965, the Company opened a new plant in Auburn, Maine. On August 4, 1965,[2] the Leather Workers International Union, AFL-CIO ("Leather Workers"), after speaking with Company officials about its intention, began an organizational campaign among petitioner's production employees at the Auburn plant (B.A. 159; 16, 96-98, 106-107). In late August, the Teamsters,[3] after an initial contact with petitioner's Auburn traffic manager, Hubert Libby, began its organiza-

[2] Unless indicated otherwise all dates refer to the year 1965.

[3] Truckdrivers, Warehousemen and Helpers Union, Local No. 340, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

tional drive among the Company's Auburn trucking division employees (B.A. 175; 114, 122, 130-131).

From the outset, top echelon Company officials made it clear to the union organizers that petitioner wanted no unions at the Auburn plant for at least two years (B.A. 159-160, 175; 16, 96-97, 100-101, 106-107, 130-131). When the unions persisted in their organizational efforts, the Company reacted by embarking upon a course of conduct which included surveillance of the Leather Workers' activities, coercive interrogations about union activities, threats of reprisals if the employees continued their union activities, and promises of economic benefits if employees would forego the Teamsters.[4] In addition, petitioner discharged two employees who were active in Union affairs, Elsie Boston and Rebecca Gould, and refused to reinstate two other employees, Karen Blaisdell and Barbara LeBel, who had ceased work in protest over the discharges. The facts relating to these incidents are as follows:

Boston and Gould each started working for petitioner in the spring of 1965, at the Auburn plant. Hired as "builders" in the "buildup room," they were both promoted rapidly—Gould to the position of "ticket girl," and Boston first to "head ticket girl" and then to "lead girl" (B.A. 21-22, 41, 53). Foremen Alexander and Roy, and Plant Superintendent La Scola often went out of their way to praise the work

[4] The court below affirmed the Board's finding that this activity constituted a violation of Section 8(a)(1) of the Act (Pet. App. A-1 through A-5; B.A. 159-161, 175-179). The Company does not contest those findings here.

of both Boston and Gould, stating that "both [were] doing very good on their jobs" and that Boston "could do the work [of lead girl] better than anyone else" (B.A. 165, 171-172; 22, 32, 54-55, 88-89, 132, 137, 139).

At the request of Boston and Gould, petitioner brought in some employees from the Sanford plant to instruct the "builders" in Auburn (B.A. 164-165; 55, 152-153). About August 6, Boston, Gould, LeBel, and other employees asked the Sanford girls about the pay scale at Sanford. The Sanford girls refused to answer their questions (B.A. 165, 25). Boston and Gould then asked Foreman Alexander for the name of the union at the Sanford plant; he referred them to La Scola, who told them that "we don't want a union up here." La Scola asked Gould if she thought that the employees would select a union, and she replied in the affirmative (B.A. 165; 26, 55, 139-140). Supervisor La Chance also refused to discuss the Sanford union with Boston (B.A. 165; 26-27).

Boston and Gould then began talking to their fellow employees about the need for a pay raise and a union. They stressed how a union would help the employees and why representation was needed. They did this on their lunch hours, their breaks, and in the buildup room, sometimes in the presence of the foremen, Alexander and Roy (B.A. 165-166; 27-29, 56-58, 68-69, 71, 75, 85-88). On August 9, Roy asked Gould if she thought the Leather Workers would get into the plant, and then told her that the union was "no good" (B.A. 166; 56-57).

On Friday, August 13, at about 4 p.m., Boston and Gould were summoned to Personnel Manager Trembly's office and told that he was thinking of discharging them because their work was unsatisfactory and they were "instigators." He suspended them both until 3 p.m. Monday, August 16, when he promised to give his decision. When Boston asked what they were "instigating," Trembly replied, "you know what" (B.A. 166; 7-9, 30-32, 58-59). During the morning of August 16, Karen Blaisdell and Barbara LeBel, two valued "builders" (B.A. 81), organized a protest group among the buildup room employees to speak with Trembly "about Elsie and Becky's return" (B.A. 166; 35-36, 59, 72-73, 89). A meeting was arranged in the buildup room, at which time Trembly asked Blaisdell and LeBel what they wanted to see him about. When told that they wished to speak on behalf of Boston and Gould, he asked them to bring the other girls over. Trembly told the assembled group that he appreciated their support for the suspended girls, but that it would not help because he was going to decide the matter as he saw fit (B.A. 167; 73-75, 89-90). Later that day, Trembly reinstated Boston and Gould, telling them that he "had learned a lot today; that he was going to keep his eyes open, and that [Boston and Gould] should keep [their] words to [them]selves" (B.A. 35).

The next morning, Roy, their immediate superior, took both girls aside and told them that they had done "a good job until now," but that they had better watch themselves closely because "the company was going to watch" for "the least little thing" they did

wrong (B.A. 167; 37, 60). They returned to work and Boston resumed talking to her fellow employees about the need for a union (B.A. 37). A few days later, Boston was informed of a union meeting scheduled for August 23, and told Gould, Blaisdell, and LeBel about it. Boston and Gould each asked for and received permission to leave early that day, giving as reasons medical appointments (B.A. 167-168; 38-40, 61). Boston and Gould both signed union cards at the meeting, as did Blaisdell and LeBel, who arrived later. It was agreed that another meeting would be held at Boston's home (B.A. 160, 167; 40-41, 51-52, 62, 75-76, 90, 101-102, 107, 157).

On the morning of August 24, the excuses offered by Boston and Gould for leaving early the day before were checked and found to be false (B.A. 168; 41, 63). Although Boston and Gould had been granted time off in the past, this was the first time that petitioner checked their excuses (B.A. 137-138; Tr. 50-51). Throughout the day, Boston and Gould talked to other employees in the buildup room about the union meeting the prior evening, and asked them to attend the next one (B.A. 168; 42-43, 62-63).

At 11 a.m. on August 25, Trembly called Boston to his office and discharged her. He told her that she "did not know how to keep [her] mouth shut" and that her work was unsatisfactory (B.A. 168-169; 43-44). Immediately thereafter, Gould too was called to Trembly's office and discharged. Trembly said that her work was unsatisfactory and that she lied as to her reason for leaving early on August 23 (B.A. 169; 64-65).

After her discharge, Boston returned to the buildup room where she told Blaisdell and LeBel what had occurred. Blaisdell and LeBel immediately took off their smocks and put them on Foreman Roy's desk (B.A. 169; 45, 76, 90-91). They then went into the next room with Boston, saying on their way out that they were leaving because "Boston had been fired for speaking about union [sic] in the plant" (B.A. 169; 76-77, 91). The three of them, joined by Gould upon her return from the office, then talked with some of the male employees about a possible walkout in protest over the discharges. A few minutes later, Supervisor Alexander told all four of them to get their checks and leave the premises (B.A. 169; 45-46, 65-66, 77-78, 91). The four girls then went to Trembly's office together, picked up their checks, and left the plant as a group (B.A. 172-173; 78-79, 92).

On August 26, Blaisdell and LeBel tried without success to see Trembly (B.A. 173; 79, 92-93). That afternoon, however, Trembly did see Blaisdell distributing union literature outside the plant gate (B.A. 173; 13-16). The next day Blaisdell and LeBel told Trembly that they had walked out with Boston and Gould because they were "mad," and asked to be reinstated to their jobs. Trembly replied that their work records were "very good," but that their jobs had been filled; he said that he would look into the matter. He then showed them a union leaflet which he said he had received, and remarked that he wanted "a couple of years" without a union in the plant (B.A. 173; 79-81, 93-94).

On August 30, Boston and Gould returned to the plant and asked Trembly to rehire them. He said that he would talk it over with their supervisors and notify them. He added that he did not want a union in the Auburn plant for about two years (B.A. 169; 15-16, 48). A few days later, Trembly told the girls that he had decided not to rehire Boston and Gould, and that he would not reinstate Blaisdell and LeBel (B.A. 169-170; 48-49, 94).

B. The Decisions of the Board and the Court of Appeals

Upon the foregoing facts, and in the light of petitioner's extensive program of restraint and coercion in violation of Section 8(a)(1) of the Act (see n. 4, *supra*), the Board found that petitioner discharged employees Boston and Gould because of their union activity, and not because they had lied, and that by doing so it violated Section 8(a)(3) and (1) of the Act (B.A. 163-172). The Board also found that employees Blaisdell and LeBel concertedly ceased work in order to protest the illegal discharges of their fellow employees, that petitioner knew this, and that, by failing to reinstate them to their former positions upon their application, petitioner further violated Section 8(a)(3) and (1) of the Act (B.A. 169, 174). The Board ordered petitioner to cease and desist from the unfair labor practices found, and to reinstate the employees discriminated against with back pay (B.A. 181-183, 186-187).

The court of appeals sustained the Board's findings and enforced its order in full (Pet. App. A-1 to

A-11). In doing so, the court refused to upset the evaluation of the credibility of the various witnesses made initially by the Trial Examiner and adopted by the Board, stating "'that questions of credibility are for the Board, subject to judicial review only when the Board oversteps the bounds of reason' * * *. There is no basis for finding that the Board overstepped the bounds of reason in making these findings" (Pet. App. A-8).

ARGUMENT

The basic question raised in the petition is whether the court below erred in affirming the Board's finding that petitioner discharged employees Boston and Gould because of their union activity, rather than for just cause. This presents only an evidentiary issue which does not warrant review by this Court. *National Labor Relations Board* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, 502-503; *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490-491. In any event, the facts summarized in the Statement, *supra*, pp. 3-9, and the careful analysis of the record reflected in the opinion of the court (Pet. App. A-1 through A-11), show that the Board's findings were fully justified.[5]

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[5] The decision in *National Labor Relations Board* v. *Ogle Protection Service*, 375 F. 2d 497 (C.A. 6), pending on petition for certiorari, No. 321, this Term, which petitioner asserts conflicts with the decision below (Pet. 6), turns upon its particular facts. Moreover, insofar as that decision reflects the view that "the uncorroborated testimony of the party who stands to benefit from an award of reinstatement

Nor is there substance to petitioner's further contention (Pet. 6-7) that the court below found the walkout of employees Blaisdell and LeBel to constitute activity protected by Section 7 of the Act without a showing that the Company was aware of the purpose of the walkout. Consistent with the rationale of *National Labor Relations Board* v. *Washington Aluminum Co.*, 370 U.S. 9, and *National Labor Relations Board* v. *Jamestown Veneer and Plywood Corp.*, 194 F. 2d 192 (C.A. 2), the court below properly found that, "the circumstances [surrounding the walkout] were such that it is only reasonable to infer that respondent knew * * * that their walkout was in protest of the discharge of their two fellow employees" (Pet. App. A-11).

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and back pay * * * may not constitute substantial evidence" (Pet. 6), it is inconsistent with the rationale of this Court's holding in *National Labor Relations Board* v. *Walton Mfg. Co.*, 369 U.S. 404, 405-408.

CONCLUSION

The petition for a writ of certiorari should be denied.

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